

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT LABORATORIES, an Illinois
corporation,

Plaintiff,

v.

BANNER PHARMACAPS, INC., a Delaware
corporation,

Defendant.

Civil Action No. 07-CV-00754-GMS

**ABBOTT LABORATORIES' MOTION TO DISMISS
BANNER'S FIRST COUNTERCLAIM**

Plaintiff Abbott Laboratories ("Abbott"), by its attorneys and pursuant to Federal Rule of Civil Procedure 12(b)(1), respectfully moves this Court for an Order dismissing, with prejudice, Banner's first counterclaim, entitled "Declaratory Judgment of Non-infringement of the '731 and '326 patents." The bases for this motion are set forth fully in the accompanying Brief, filed simultaneously herewith.

Dated: August 8, 2008

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

By: /s/ Paul E. Crawford

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CERTIFICATE OF SERVICE

I hereby certify that, on August 8, 2008, a true and correct copy of the foregoing documents, entitled **Abbott's Motion to Dismiss Banner's First Counterclaim** were served on the following persons via the following methods:

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